

It was urged before us that section 14 conferred a benefit on the appellants, the benefit of due enquiry before dismissal and as they had been deprived of that benefit, their dismissal was a nullity. As stated earlier, the provisions of section 14 are not mandatory. An employer may or may not proceed under section 14. The real benefit conferred on an employee by section 14 is the right to complain to the Minister and the power conferred on the Minister to order reinstatement regarding an unfair dismissal. The appellants in this case, for some undisclosed reason, chose not to exercise this right.

In our judgment the appellants' claim for a Declaratory Order based on the provisions of section 14 clearly failed. And a Declaratory Order, the effect of which would be reinstatement in employment, is rarely made under the common law. Lord Morris, delivering the judgment of the Privy Council in *Francis v. Municipal Councillors of Kuala Lumpur*,⁽⁵⁾ said at page 410:—

"...In their Lordships' view when there has been a purported termination of a contract of service a declaration to the effect that the contract of service still subsists will rarely be made. This is a consequence of the general principle of law that the Courts will not grant specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the Court..."

It was difficult to see what, if any, were the special circumstances in the appellants' case. They were just ordinary employees. They did not hold any office. There was no question of status or property rights. The common law rule applicable in such straightforward cases was stated by Lord Morris in *University Council of Vidyodaya University of Ceylon v. Silva*,⁽⁶⁾ at page 79:—

"...If the Master rightfully ends the contract there can be no complaint; if the master wrongfully ends the contract then the servant can pursue a claim for damages.... In a straightforward case where a master employs a servant the latter is not regarded as the holder of an office and if the contract is terminated there are ordinarily no questions affecting status or involving property rights."

It was suggested that damages were not an adequate remedy in this case. This was clearly an untenable submission because when the appellants were dismissed, there was nothing to stop them obtaining similar employment elsewhere.

Finally, it was urged that as the appellants had been dismissed for misconduct without being given a hearing, there was a fundamental breach of the rules of natural justice. This submission was also untenable because as pointed out by the Privy Council in *Vasudevan Pillai & Anor. v. The City Council of Singapore*,⁽⁷⁾ (1968) 2 M.L.J. 16 at page 20, "the relationship of master and servant or employer and employee gives rise to no application of the principle of *audi alteram partem* on dismissal."

In our judgment, the trial judge came to a right decision in rejecting the appellants' claim for a Declaratory Order. Accordingly their appeal failed and was dismissed.

Appeal dismissed.

Solicitors: J. B. Jeyaretnam & Co.; Lee & Lee.

IN RE AN APPLICATION BY N.H.E. NASSIM

[C.A. (Wee Chong Jin C.J., Kulasekaram and D'Cotta JJ.)
April 21, 1976]

[Singapore — Civil Appeal No. 39 of 1975]

Administrative Law — Application for certiorari and prohibition — Appointment of assessors for hearing of a land acquisition appeal — Objection to assessors — Application for appointment of two other assessors dismissed by Commissioner of Appeals — Meaning of "assessor" — Allegation of bias — Land Acquisition Act (Cap. 272), s. 26.

This was an appeal from the decision of Winslow J. (ante, p. 97) dismissing an application by the applicant to quash the order of the Commissioner of Appeals who had dismissed an application for the selection of two other assessors to replace those objected against and to prohibit him from further proceeding in the appeal.

Held, dismissing the appeal: (1) the appointment of persons who have no special qualifications, expertise or knowledge of land values as assessors under the Land Acquisition Act is not in excess of jurisdiction;

(2) on the facts the objection against Mr. Charlie Chi Swan Chiang, one of the assessors selected by the Commissioner, was totally devoid of substance and even assuming special qualifications were necessary he seemed to possess them;

(3) on the evidence presented on behalf of the appellant, Mr. Goh Kee Song the other assessor selected, seemed to be sufficiently qualified to be capable of making a proper assessment and to assist the Commissioner;

(4) the allegations of fact relied on by the appellant were insufficient to warrant a finding that there would be a real likelihood or even a reasonable suspicion that Mr. Goh Kee Song would be biased when sitting as a member of the Appeals Board to hear the appellant's appeal against the award of the Collector. Nor would it appear to right-thinking people that there are solid grounds on the facts as alleged for suspecting that Mr. Goh Kee Song as a member of the Appeals Board may, however unconsciously, be biased.

COURT OF APPEAL:

P. Freeman Q.C. (K.E. Hilborne with him) for the appellant.

Warren Khoo for the Collector of Land Revenue, respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): The appellant, Nassim Hye Ezekiel Nassim, was the owner of approximately 53 acres of land prior to its acquisition in 1971 by the Government pursuant to the provisions of the Land Acquisition Act (Cap. 272) (hereinafter referred to as "the Act"). Pursuant to section 10 of the Act the Collector of Land Revenue made an award of \$477,560 as compensation which in his opinion should be allowed for the acquired land. The appellant, being aggrieved by the award, appealed to the Appeals Board constituted under the Act.

Before we proceed to state the other relevant facts, it is convenient to set out the relevant sections of the Act. These are:—

"2.—(1) In this Act, unless the context otherwise requires — 'assessor' means a member of the panel of assessors appointed under the provisions of subsection (2) of section 26 of this Act;

'Board' means an Appeals Board constituted under the provisions of subsection (1) of section 19 of this Act;

'Collector' means any officer appointed by the President to be a Collector of Land Revenue or a Deputy Collector of Land Revenue;

'Commissioner' means a Commissioner of Appeals or a Deputy Commissioner of Appeals, appointed under the provisions of

subsection (2) of section 19 of this Act, and includes an acting Commissioner of Appeals or acting Deputy Commissioner of Appeals;"

"19.—(1) For the purpose of hearing appeals in respect of any award made by the Collector under this Act, there shall be constituted one or more Appeals Boards consisting of a Commissioner of Appeals or a Deputy Commissioner of Appeals, either sitting alone or with two assessors in the manner provided by section 26 of this Act."

"26.—(1) For the purpose of determining appeals in respect of any award made by the Collector under this Act, in any case where the appeal is against an award of —

(a) two hundred and fifty thousand dollars or more, the Board shall consist of the Commissioner or Deputy Commissioner sitting with two persons selected by the Commissioner or Deputy Commissioner, as the case may be, from the panel appointed under the provisions of subsection (2) of this section;

(2) For the purpose of enabling the Board to be constituted under the provisions of subsection (1) of this section, there shall be a panel of assessors (in this Act referred to as 'the panel'), the members of which shall be appointed by the Minister. The panel shall consist of such number of persons as the Minister may think fit, and the name of every person appointed to the panel shall be published in the Gazette.

(3) No person shall be eligible to be appointed or to remain a member of the panel who —

- (a) is an undischarged bankrupt;
- (b) has been sentenced to imprisonment for a term exceeding six months and has not received a free pardon; or
- (c) is a person found or declared under any written law to be of unsound mind."

"27.—(1) Where the Board is constituted otherwise than by the Commissioner alone, the Commissioner shall not be bound by the advice or opinion of the other members of the Board.

(2) A decision of the Board shall be signed by the Commissioner and shall be delivered by him or by the Registrar on the direction of the Commissioner.

(3) The Board may, after hearing an appeal confirm, reduce, increase or annul the award or make such order thereon as to it may seem fit."

"33.—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall take into consideration the following matters and no others, namely:—

- (a) the market value at the date of the publication of the notification under subsection (1) of section 3 of this Act, if the notification is within six months from the date thereof followed by a declaration under section 5 of this Act in respect of the same land or part thereof, or in other cases the market value at the date of the publication of the declaration made under section 5 of this Act;
- (b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;
- (c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing that land from his other land;
- (d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings;"

"34. In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall not take into consideration —

- (a) the degree of urgency which has led to the acquisition;
- (b) any disinclination of the person interested to part with the land acquired;
- (c) any damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;
- (d) any damage which is likely to be caused to the land acquired after the date of the publication of the declara-

tion under section 5 of this Act by or in consequence of the use to which it will be put;

- (e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; or
- (f) any outlay on additions or improvements to the land acquired, which was incurred after the date of the publication of the declaration under section 5 of this Act, unless the additions or improvements were necessary for the maintenance of any building in a proper state of repair."

We continue with the facts. The appellant was informed by letter that as the appeal falls under the provisions of section 26(1)(a) "the Commissioner has selected Messrs. Goh Kee Song and Charlie Chi Swan Chiang as assessors in the hearing." It is not in dispute that the two named assessors had been duly appointed members of the panel of assessors by the Minister under section 26(2). The appellant made an application under the Land Acquisition (Appeals Board) Regulations 1967 for the selection of other assessors in substitution for the selected assessors. The appellant's grounds for objection to the selected assessors are set out in his application which reads: —

"2. The applicant herein is the appellant in these proceedings and prior to the compulsory acquisition under the provisions of the Land Acquisition Act 1966 was the owner of Lot 119 of Mukim XXX being land situated in the district of Tampines and comprising 53 acres and 10 poles. It has been established that there are large and valuable deposits of high-grade sand in and under the said land, amounting approximately to between 1½ to 2 million cubic yards or more which has been valued by consulting engineers and others qualified to make an informed assessment as being worth, *in situ*, between 9 and 10 million dollars. It is submitted that the proper valuation of the land in question, together with the sand deposits therein, and the valuation of the residual land after quarrying of the said sand, are matters requiring the application of special knowledge, expertise and judgment and that the assessors appointed pursuant to the provisions of the said Act should therefore be appropriately qualified in order to be able to proffer advice and guidance to the tribunal in its deliberations on the appellant's appeal.

4. The grounds of objection to the assessors appointed are as follows:—

1. *As to Mr. Goh Kee Song and Mr. Charlie Chi Swan Chiang.*

It is understood that Mr. Goh Kee Song is a Public Accountant by profession and that he does not possess adequate special knowledge or experience relating to the valuation of land and/or quarrying, sale or marketing of sand and it is respectfully suggested that he cannot be said therefore to be appropriately qualified to act as an assessor in these proceedings. It is understood that Mr. Charlie Chi was formerly a director of Eastern Realty Company Limited and other companies engaged in the sale purchase and development of immovable property and as such would have been appropriately qualified to act as an assessor in so far as the valuation of land as such was concerned. However, it is understood that Mr. Charlie Chi Swan Chiang retired from business some years ago and is no longer actively and continuously concerned in such business.

2. *As to Mr. Goh Kee Song alone.*

It is understood that Mr. Goh Kee Song was Registrar of Vehicles at sometime and thereafter was Chairman of the Singapore Telephone Board for some years. It is submitted that it is inappropriate and contrary to the accepted principles of natural justice that an assessor with past or present affiliations with the Government of Singapore should participate in proceedings to which the Government itself is a party".

The Attorney-General acting for the Collector of Land Revenue objected to the appellant's application and subsequently the Commissioner sitting alone heard the application on April 25, 1975. The appellant was

represented by Counsel. With respect to Mr. Charlie Chi Swan Chiang the contention of Counsel for the appellant is contained in the shorthand transcript of the proceedings before the Commissioner which reads:—

"...Charlie Chi Swan Chiang, it could be said that he has knowledge of land valuation. As I know he was formerly the Manager of Eastern Realty Company. My objection is, people who are retired should not be sitting as assessors".

With respect to Mr. Goh Kee Song the contention of the appellant's Counsel was that he appears to have no knowledge of land valuation and to have a "past affiliation — to be an employee of the Government." The Commissioner dismissed the application on April 25, 1975 on the ground that it was entirely without merit.

Thereupon the appellant commenced proceedings in the High Court for—

- (1) an Order of *Certiorari* to remove into the High Court for the purpose of being quashed the Order made by the Commissioner on April 25, 1975, and
- (2) an Order of Prohibition directed to the Commissioner prohibiting him from further proceeding in the appeal against the award of the Collector.

The grounds on which the relief is sought are—

- (i) that the two assessors selected by the Commissioner to sit with him in the hearing and disposal of the appellant's appeal are not qualified, suitable or fit to sit in such capacity and that their acting in such capacity is or would be contrary to the rules of natural justice, and
- (ii) that the Commissioner sitting alone had no jurisdiction to make the said Order of April 25, 1975.

In an affidavit in support of the application, Mr. Hilborne, an advocate and solicitor, whose firm is acting as solicitors for the appellant, affirmed as follows:—

"6. I am informed by a number of members of the public and verily believe that Mr. Goh Kee Song is and practises as a Public Accountant and that formerly he was Registrar of Vehicles and therefore a Government servant and following that he was Chairman of the Singapore Telephone Board, a government statutory body, for a number of years. The Applicant took exception to Mr. Goh Kee Song on two grounds; firstly, it did not appear that as a Public Accountant, Mr. Goh Kee Song had any special knowledge of land value or the assessment, for valuation purposes, of land; secondly, the Applicant considered that his close affiliations with the Government of Singapore as a civil servant and a member of one of its statutory boards rendered it possible that he would or might be biased or prejudiced in the view he took of the Applicant's appeal.

The Applicant also objected to the selection of Mr. Charlie Chi Swan Chiang as an assessor, although with less force. From similar sources of information, it appeared that Mr. Chi had at some time been manager of a company dealing in real estate and would have had some knowledge of land values. Nevertheless it seemed that Mr. Chi had retired from business some years ago, so that there was a possibility that he was not in touch or conversant with contemporary market values of land".

On September 8, 1975, two weeks before the Motion was heard by Winslow J., Mr. Hilborne in another affidavit affirmed as follows:—

"1. I refer to my affidavit of May 5, 1975, filed in Originating Summons No. 144 of 1975, since which date I have elicited further information regarding the offices and appointments previously held by Mr. Goh Kee Song, which are as follows:—

A	1958 (approximately)	Appointed Acting City Assessor.
	1958 to 1961 (July)	Registrar of Vehicles, Singapore.
	1959 (September)	Chairman, Singapore Telephone Board.
	to 1966 (June)	
	1967	Appointed Treasurer, SATA.
B	1970	Appointed Receiver and Manager, Eupoc Pulp & Paper Industries Limited by Development Bank of Singapore.
	1973 (May)	Appointed Treasurer of Singapore Red Cross Society by President of Singapore.
	1975 (May)	Appointed Director of Sembawang Shipyard Limited.

C 2. I verily believe that with regard to the offices of Acting City Assessor and Registrar of Vehicles, the said Mr. Goh Kee Song held these appointments as a public servant in the employment of the Government of Singapore and that with regard to the other offices held by him from time to time, as set out in paragraph 1 hereof, the same entail membership of statutory bodies or boards the members whereof are appointed by the Government of Singapore or wherein the Government of Singapore has, directly or indirectly, an interest or otherwise is or are an appointment or appointments directly or indirectly made by the said Government."

During the hearing of the Motion the appellant abandoned the ground that the Commissioner, sitting alone, had no jurisdiction to make the Order of April 25, 1975. Winslow J. in a reserved judgment, dismissed the application with costs and the appellant now appeals. Mr. Freeman, on his behalf, raises two main contentions which we now consider.

1. Meaning of "assessors" in section 26 of the Act.

It is submitted that the word "assessors" in the Act must mean persons who are capable of making an assessment and of assisting the Commissioner by virtue of their experience, knowledge and special expertise in the subject matter of the enquiry, i.e. land values but, as we understand Mr. Freeman's submission, there are two limbs to it.

First, the Legislature must have intended, or the courts ought to construe, the word "assessors" to mean persons who are specially qualified to value land. Secondly, even though persons who are not so specially qualified can be appointed by the Minister under section 26(2) to the panel of assessors, in any particular appeal to be decided by an Appeals Board the Commissioner must select from the panel of assessors two persons who by virtue of experience, knowledge or special expertise are capable of making an assessment and can assist the Commissioner in arriving at a proper determination of the appeal.

We do not accept Mr. Freeman's submissions. It is significant that in the definition section of the Act (section 2) "assessor" is defined to mean merely "a member of the panel of assessors appointed" under section 26(2). According to Wharton's Law Lexicon (14th Ed.) "assessors" mean "literally those who sit by the side of another; persons appointed to ascertain and fix the value of taxes, rates, etc. Also persons sometimes associated with judges of courts to advise and direct the decisions of such judges." It is also significant that where a legislature requires an "assessor" to have special expertise, knowledge or qualifications expressions such as "of nautical skill and experience" (Eng-

lish County Courts Act, 1934, section 88), "a medical referee to sit with him as an assessor" (Schedule II of the Workmen's Compensation Act, 1925 of England), "one or more assessors, specially qualified" (English Judicature Act, 1925, section 98), are enacted. In our judgment the appointment of persons who have no special qualifications, expertise or knowledge of land values as assessors under the Act is not in excess of jurisdiction.

With regard to what we call the second limb of Mr. Freeman's submission it is contended that the Commissioner's selection of Mr. Goh Kee Song and Mr. Charlie Chi Swan Chiang from the panel of assessors to constitute with him the Appeals Board to hear the appellant's appeal amounts to a denial of natural justice. With regard to Mr. Charlie Chi Swan Chiang while it is admitted that this gentleman was formerly a director of a company engaged in the sale, purchase and development of immovable property and as such would have been qualified to act as an assessor in so far as valuation of land is concerned, the objection is that because he has retired from business some years ago he has ceased to have the necessary qualifications to be capable of making a proper assessment and to assist the Commissioner. In our judgment on the facts the objection against Mr. Charlie Chi Swan Chiang is totally devoid of substance and, assuming special qualifications are necessary, he seems to us to possess them.

In the case of Mr. Goh Kee Song the objection is that this gentleman is an accountant by profession and does not possess adequate special knowledge or experience relating to the valuation of land and/or the quarrying sale or marketing of sand so that it would be denying justice to the appellant if one of the assessors is a person who has no ability to make a proper assessment and is unable to assist the Commissioner to arrive at a proper determination of the appeal. No authority is cited in support of this contention and we know of none. In principle we are of the opinion that there can be no denial of natural justice merely on the ground that the Commissioner, who is empowered by the statute to select the assessors from a panel of assessors duly appointed in accordance with the statute, selects from that panel assessors who have no special experience, knowledge or expertise in the subject matter for determination. The answer may well be different had there appeared in section 26(1)(a) after the word "persons" the expression "specially qualified" such as can be found in section 98 of the Judicature Act, 1925 of England which provides:—

"98(1). In any case or matter before the High Court or the Court of Appeal, the Court may, if it thinks it expedient to do so, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partially with their assistance".

In any event, on the evidence presented on behalf of the appellant, Mr. Goh Kee Song is a qualified accountant and has previously been the Acting City Assessor, a person who assesses annual values of land for purposes of rating. Having regard to these facts he seems to us to be sufficiently qualified to be capable of making a proper assessment and to assist the Commissioner.

A 2. Bias.

This ground of objection is taken against Mr. Goh Kee Song alone and is based on Mr. Hilborne's affidavit that from approximately 1958 to July 1961 (almost 15 years ago) he was first Acting City Assessor and then Registrar of Vehicles and was thus a former public servant in the employment of the Government. Although it does not appear anywhere in the Record of Appeal we can take judicial notice of the fact that during those three years the City Assessor and the Registrar of Vehicles were not persons in the employment of the Government but were in the employment of a local authority. It is also alleged that in 1967 Mr. Goh Kee Song was appointed treasurer of SATA i.e. Singapore Anti-Tuberculosis Association; in 1970 he was appointed by the Development Bank of Singapore the receiver and manager of a public limited liability company; in 1973 was appointed by the President of Singapore the treasurer of the Singapore Red Cross Society and in May 1975 was appointed a director of Sembawang Shipyard Limited. It is alleged that these appointments are to "statutory bodies or boards the members whereof are appointed by the Government of Singapore or wherein the Government of Singapore has, directly or indirectly, an interest or otherwise is or are an appointment or appointments directly or indirectly made by Government."

In our opinion these allegations are far too vague and, in the case of the Singapore Anti-Tuberculosis Association, the Singapore Red Cross Society and the receivership and managership of a public limited liability company these appointments and offices are so unconnected with the Government to form any basis in support of the contention that *certiorari* or prohibition should go. The allegations of fact relied on are in our judgment insufficient to warrant a finding that there would be a "real likelihood" or even "a reasonable suspicion" that Mr. Goh Kee Song would be biased when sitting as a member of the Appeals Board to hear the appellant's appeal against the award of the Collector. Nor in our judgment would it appear to right-thinking people that there are solid grounds on the facts as alleged for suspecting that Mr. Goh Kee Song as a member of the Appeals Board may (however unconsciously) be biased.

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: Hilborne & Co.